

1 62. (NEW) The apparatus of claim 54 wherein the pipette  
2 tip of the first part and the constricted passage of the  
3 second part are designed such that, as the pipette tip  
4 passes through the constricted passage, walls defining the  
5 pipette tip collapse inwardly and form a moving liquid seal  
6 such that the moving liquid seal progresses up the pipette  
7 tip as the pipette tip passes through the constricted  
8 passage.

1 63. (NEW) The apparatus of claim 54 wherein the pipette  
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6 such that the moving liquid seal progresses up the pipette  
7 tip as the pipette tip passes through the constricted  
8 passage, wherein the moving liquid seal forces liquid in  
9 the pipette tip upward into the sample cup. --

#### REMARKS

In view of the foregoing amendments and the following remarks, the applicant respectfully submits that the pending claims are not anticipated under 35 U.S.C. § 102. Accordingly, it is believed that this application is in condition for allowance. If, however, the Examiner believes that there are any unresolved issues, or believes that some or all of the claims are not in condition for allowance, the applicant respectfully requests that the Examiner contact the undersigned to schedule a telephone

Examiner Interview before any further actions on the merits.

The applicant will now address each of the issues raised in the outstanding Office Action.

Rejections under 35 U.S.C. § 102

Claims 1-10 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,432,366 ("the Ruediger patent"). The applicant respectfully requests that the Examiner reconsider and withdraw this ground of rejection in view of the following.

Independent claim 1 is not anticipated by the Ruediger patent because the Ruediger patent does not teach **a constricted passage**, arranged between a channel and a support, **for collapsing a pipette tip of a first part as the first part is inserted into the second part**. Claim 1 is reprinted below with this feature depicted in bold typeface:

1. An apparatus for preparing a fluid sample, the apparatus comprising:
  - a) a first part including
    - i) a pipette tip having an open tip end, and
    - ii) a sample cup, fluidly coupled with the pipette tip and having an open end; and
  - b) a second part including
    - i) a channel for receiving the pipette tip of the first part,
    - ii) a support for accommodating at least a

portion of the sample cup of the first part, and  
iii) **a constricted passage**, arranged between the channel and the support, **for collapsing the pipette tip of the first part as the first part is inserted into the second part.** [Emphasis added.]

This feature is discussed below. First, however, the Ruediger patent is described.

The most relevant part of the Ruediger patent describes a valve block C used to dispense, or not dispense, fluid from reactor vessels 10, via outlet tubes 52, into a wells 12 of a collection block D. (See, e.g., Figure 1 and column 8, lines 43-51.) Leur tip adapters 56 are used to fluidly couple the reactor vessels 10 with outlet tubes 54. (See, e.g., column 9, lines 48-55 and Figure 4.) More specifically, as shown in Figure 4, 6 and 8, as a slide 44 is moved by a threaded screw 74, each of its spaced, downwardly extending, ribs 66 force a resilient member 68 into an outlet tube 54 arranged between it and a corresponding upward extending rib 62 of a bottom plate 40. This structure operates to form a "pinch valve". (See, e.g., column 9, line 39 through column 10, line 55.) As can be appreciated from this disclosure, as well as reference to Figures 6 and 8, the outlet tube 54 is pinched after it has already been situated. (See, e.g., column 10, lines 6-10.)

Independent claim 1 is not anticipated by the Ruediger patent because the Ruediger patent does not teach **a constricted passage**, arranged between a channel and a

support, for collapsing a pipette tip of a first part as the first part is inserted into the second part. As discussed above, in the Ruediger patent, an outlet tube 54 is pinched after its has already been situated--it is not collapsed as it is inserted. Thus, independent claim 1 is not anticipated by the Ruediger patent for at least this reason. Since claims 2-10 depend, either directly or indirectly, from claim 1, they are similarly not anticipated by the Ruediger patent for at least this reason.

The applicant notes that the Examiner stated that the Ruediger patent is "capable of" collapsing the tube 54 as it is inserted into parts 40, 79 and 82. (See Paper No. 13, page 2.) (The Examiner made a similar argument with respect to dependent claim 4.) First, this assertion is unsubstantiated. There is nothing to show that the Ruediger patent has this capability. More importantly, even if the Ruediger patent was capable of collapsing the tube 54 as it is inserted into parts 40, 79 and 82, the Supreme Court has held that prior devices capable of being adjusted so as to operate in the same manner as a patented device did not anticipate that patented device (Clough v. Gilbert & Baker Mfg., 106 U.S. 166 (1882)) and that a prior device capable of slight modification so as to operate in the same manner as the patented device did not anticipate that patented device (Topliff v. Topliff, 145 U.S. 156 (1892)). Accordingly, even assuming, arguendo, that the Ruediger patent were capable of doing what the Examiner contends, such a capability would be immaterial to the question of whether or not it anticipates claim 1.